THE IMPENDING CONFLICT.

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IN the last number of this REVIEW appeared, side by side, two articles of far-reaching and portentous importance: the one entitled "An Appeal to Our Millionaires," by X, who is said to be "the most profound philosopher living in the United States"; the other entitled "The Graduated Taxation of Incomes and Inheritances," by the Hon. Wayne Mac Veagh, justly distinguished as one of the foremost of our jurists and statesmen. By these coincident declarations, emanating from the highest and most conservative sources, the American people have been warned, in no uncertain terms, that they are in the presence of an irrepressible conflict by whose side "all the other questions under public discussion are of little or no importance." X, in his "appeal to our millionaires," fearlessly states the ultimate question, when he reminds them that the title to their "surplus wealth" rests upon nothing more substantial than the legislative will of the American people. He admonishes them, therefore, to abstain from such vulgar and cruel ostentation as is likely to bring upon them the growing wrath of an all-powerful electorate. To use his own language:

> "These considerations naturally bring us to the *crux* of the situation, which is, as has been stated, the popular estimation of the absence of any moral title of our millionaires to the billions of money they have either themselves succeeded in abstracting from the common store or have inherited from ancestors who had so abstracted it."

His argument is that, under a popular government, all property rights rest solely upon laws made by the people themselves, whose moral convictions are the ultimate bases of everything. In view of that fact, he thinks it well for the millionaires to be reminded of the words of Daniel Webster, who said:

"In the nature of things, those who have not property and see their neighbors possessed of much more than they think them to need cannot be favorable to laws made for the protection of such property. When this class becomes numerous, it grows clamorous. It looks on property as its prey and plunder, and is naturally ready at all times for violence and revolution. It would seem, then, to be the part of political wisdom to found government on property, but to establish such distribution of property, by the laws which regulate its transmission and alienation, as to interest the great majority of society in the support of the government."

Mr. Webster's sagacious suggestion is then supported by the declaration of the late Lord Coleridge, Chief Justice of England, who, in discussing the rules by which the practical enjoyment of property is regulated, said:

"Now, what is the right of property? The end of property is subsistence, by which end nature has bounded our pretentions to it; hence, in a state of nature, we cannot take more than we use, nor hold it longer than we live and are capable of using it. . . . The right of inheritance, a purely artificial right, has been at different times and in different countries very variously dealt with. The same power which prescribes rules for the possession and descent of property can of course alter them, for plain absurdities would follow if this were not so; and the consent of nations and the practices of ages have long since established this simple truth."

Stating the same principle in his own language, X says:

"Now, what are the bulwarks of private property in the imperial commonwealth of New York, where so much of it is situated? As to incomes, nobody will have the effrontery to deny that, if the majority of the voters choose to elect a Governor of their own way of thinking and a majority in both houses of the Legislature, they can readily enact a progressive taxation of incomes which will limit every citizen of New York State to such income as the majority of the voters consider sufficient for him. It is, if possible, even less likely that anybody will deny that, in order to effectually turn every dollar of the property of every decedent into the public treasury at his death, no affirmative legislation is necessary. It is only necessary to repeal the statutes now authorizing the descent of such property to the heirs and legatees of the decedent. It is perfectly apparent, therefore, that there is no ultimate security for a single dollar of private property in New York, and precisely the same statement is true of all other American States, except such as a majority of the voters may decide to be just and wise, both to the possessors of such property and to the community at large."

X impresses upon his readers the fact that such principles were proclaimed as elementary by Webster, speaking to an assemblage of conservative citizens of New England met to celebrate the landing of the Pilgrims, and by Chief-Justice Coleridge, addressing an assemblage of conservative lawyers in conservative Scotland.

After stating the contentions involved in the discussion of "the graduated taxation of incomes and inheritances," Mr. Mac Veagh asks this question:

"Ought there to be a limit fixed beyond which, for the public welfare, the further accumulation of surplus wealth should be discouraged? If so, where should the limit be placed and the discouragement begin, and at what ratio should the discouragement proceed? And if there is to be such discouragement, is a system of graduated taxation the most effective and least objectionable method of applying it? The suggestions formerly made in reference to such a system were concerned with apportioning the inevitable burdens of taxation. These latter suggestions relate themselves to the welfare of society, and raise the question whether gigantic fortunes are in themselves, or in the methods of their acquisition, such serious obstacles to the contentment, the peace, and the healthy growth of the community as to call for their abatement. We are to-day face to face with these grave and far-reaching problems. It is impossible either to avoid them or to postpone them. All that is left for us is to discuss them and to endeavor to settle them upon some sane and rational basis. It is equally futile and cowardly to pretend that they do not exist or that we need not bother ourselves about them."

Two weeks before the foregoing saw the light, the President of the United States, in a thoughtful and weighty speech made at the laying of the corner-stone of the office-building of the House of Representatives, said:

"It is important to this people to grapple with the problems connected with the amassing of enormous fortunes, and the use of such fortunes, both corporate and individual, in business. We should discriminate in the sharpest way between fortunes well won and fortunes ill won; between those gained as an incident to performing great services to the community as a whole, and those gained in evil fashion by keeping just within the limits of mere law-honesty. Of course, no amount of charity in spending such fortunes in any way compensates for misconduct in making them. As a matter of personal conviction, and without pretending to discuss the details or formulate the system, I feel that we shall ultimately have to consider the adoption of some such scheme as that of a progressive tax on all fortunes beyond a

certain amount, either given in life, or devised or bequeathed upon death, to any individual—a tax so framed as to put it out of the power of the owner of these enormous fortunes to hand out more than a certain amount to any one individual; the tax, of course, to be imposed by the National and not the State Government. Such taxation should, of course, be aimed merely at the inheritance or transmission in their entirety of those fortunes beyond all healthy limits."

The mighty problems thus solemnly propounded by leaders of American thought are pending for solution throughout the English-speaking world. They are no less serious at Westminster than at Washington. As X points out, within a fortnight after President Roosevelt had declared in favor of the graduated taxation of inheritances, Mr. Asquith, as Chancellor of the Exchequer, admonished the House of Commons that "the time has arrived for an inquiry into the practicability of a graduated tax upon incomes." The supreme power in the hereditary republic of England is vested in a representative chamber, whose members are chosen by an electorate resting practically upon manhood suffrage, an electorate which has grown from about 400,000 voters in 1832 to nearly 7,000,000 at the present time. The sudden appearance in the British House of Commons of more than fifty Labor members is conclusive evidence of the fact that this growing element of political power is resolved to take a hand in the solution of problems in which they feel they are deeply concerned. As the English constitutional system is far more democratic than our own, any revolution may there be wrought under the forms of law the moment the majority of the popular chamber passes under the control of those who have resolved to bring it about. Such majority is entirely unrestrained by any constitutional limitations on the legislative power. The omnipotent Parliament knows nothing of vested interests or vested rights. Above all, it knows no such thing as a charter of a private corporation as an inviolable contract beyond legislative control. For that reason, it is impossible for a trust or monopoly to live a moment in the British Empire in opposition to the legislative will. When the monopolies granted by Elizabeth were attacked, she at once sent a message to the Commons with the promise that, as to such patents as were "grievous to her subjects, some should be presently repealed, some superseded, and none put in execution but such as should first have a trial, according to law, for the good

of the people." In the Parliament of 1621, the power of impeachment which had lain dormant for a hundred and sixty-two years was revived, in order to punish two monopolists for fraud and oppression committed by them as patentees for the exclusive manufacture of gold and silver thread, for the inspection of inns and hostelries, and for the licensing of ale-houses. By an act which could be printed on a page of note-paper, the British Parliament could cut the roots of all such trusts and monopolies as now vex the national life of the United States, without any review whatever by the judicial power. In the same way, it could rearrange the entire system of property rights, and tax incomes and inheritances in any form it saw fit to adopt. Nothing is more barren than Austin's ethical theory that an act of Parliament which violates fundamental rights, though legal and binding, is still unconstitutional.* No English jurist will for a moment deny that the omnipotent Parliament, if it sees fit, may seize and sell the estates of any landowner in the realm and distribute the proceeds among the poor of London. The only restraint which protects the holders of property against such a possibility is the conservatism and sense of natural justice of a people who, for a thousand years, have lived under the reign of law. As the English people have always been willing to trust themselves, they have not hesitated to leave the supreme legislative power untrammelled, so that, at critical moments, great offenders or combinations of offenders against the state may be made to feel the stroke of "that two-handed engine at the door," ever "ready to smite once, and smite no more."

Our system of constitutional limitations on legislative power is purely an American invention, and its most important outcome is the term "vested rights,"—rights protected against legislative interference forbidden in fundamental laws, and against judicial interference contrary to "the law of the land." Thus the founders of this republic, unwilling to commit untrammelled legislative power either to State or Federal Legislatures, vested a supreme revising power in the judiciary, State and Federal. The cardinal purpose of this system of checks and balances was to prevent, in the course of our political evolution, any sudden or radical changes as the result of popular wrath or fanaticism; it being most

* "Province of Jurisprudence," Sect. vi. See also Leslie Stephen, "Science of Ethics," p. 143.

desirable that all such changes should be worked out gradually, under the forms of law. In the earlier stages of our growth, the harness did not chafe very much, as there was room enough for expansion within the lines which our paper constitutions defined. But, now that the national life has become vast and complex, and abnormal accumulations of wealth have resulted mainly through such protection and privileges to private corporations as are granted in no other country, we are confronted with a situation in which the question of questions is this: How can a readjustment be brought about, under the existing system of constitutional limitations, without a revolutionary change in the organism as a whole? All conservative statesmen and jurists should seek such a solution, with the fact clearly before their eyes that, if it cannot be found, the readjustment will force itself through revolutionary channels. As X has stated the case:

"The American people, like most other peoples of which we have knowledge, may be roughly divided into three classes—those who have much more money than is good for them, those who have perhaps as much money as is good for them, and those who have less money than would be good for them. The first class is numerically small; the second class is larger but still small; and the third class is vastly larger than both the others together. As each voter in this country at this time has exactly the same voice in the government as every other voter, the laws regulating the acquisition and descent of property must sooner or later conform to the views of the voters of the third class."

The ranks of that third class are being rapidly recruited from Teutonic, Slavonic and Latin lands, where the growth of Socialism and Anarchism is rampant among the laboring classes. Here the American Federation of Labor has announced its purpose to enter the field of practical politics, in order to give political effect to its demands. It is, therefore, equally futile and cowardly to pretend that the problem of problems is not before us for solution. The simple question now is as to the capacity of the existing constitutional machinery to provide the means through which certain inevitable changes can be brought about without a sudden wrench. That machinery must be so operated as to produce two results: first, the organized and consolidated power of corporate wealth must be subjected, as never before, to State control; second, the abnormal accumulations of surplus wealth, largely the product of corporate agency, must be gradually redistributed and

made impossible for the future, through a graduated tax on inheritances and incomes, on the bases outlined by President Roosevelt and Mr. Mac Veagh.

As all the world knows, the peculiar vantage-ground occupied by corporations in the United States is the outcome of the judge-made law laid down in the Dartmouth College case, wherein it was held, contrary to English ideas, that the charter of a private corporation is a contract, within the meaning of that clause of the Constitution of the United States which declares that no State shall make any law impairing the obligation of contracts. For a long time, the effects of that decision were salutary, as the national wealth was vastly increased through the confidence which it imparted to corporate enterprise. But, since the corporate power and wealth thus nourished have become a menace to the commonwealth, the Supreme Court has been doing all in its power to narrow the scope of the decision, by widening the declaration that the obligation clause does not restrain States in the regulation of their civil governmental institutions. While the Bar would justly regard the entire overruling of the case in question as revolutionary, it may be well for all who are interested in its authority to remember the fact that the power that made can unmake, the power that created can destroy. If Marshall and his associates had only interpolated the word "not" at a certain place in their opinion, private corporations in the United States would have stood upon the only basis ever provided for them in the law of England. If that basis had been adopted, while we would have less corporate wealth, we would not be confronted with the gigantic evils arising out of the control of interstate commerce through combinations between common carriers, and through discriminating methods employed by individual carriers. The struggle of Congress with the $14,000,000,000 invested in railroads is progressing hopefully, under the valiant leadership of President Roosevelt. That struggle, which began with the ineffectual Interstate Commerce Act of 1887, halted for many a year, until the popular impetus came whose outcome is the Hepburn Bill, by which power is given to the Commission, not only to declare old practices and rates unreasonable, but to formulate and prescribe new, just and reasonable practices and rates, and to put them in force with the aid of the Federal courts, subject to a broad and immediate court review. That

bill, however, terminates only the first stage in the conflict, as the advocates of still greater state control contend that, in fixing the amount the railroads may earn, the Commission must take into account the actual value of the railroads, estimated in round numbers at $6,000,000,000, and not their nominal capitalization, estimated in the same way at $14,000,000,000. The ultimate question thus presented is this: Shall $8,000,000,000, claimed by the railroads as property, be annihilated through a further exercise of Federal control? That question must find its ultimate solution at the ballot-box, because the Supreme Court has held that, if a railroad corporation has bonded its property for an amount that exceeds its fair value, or if its capitalization is largely fictitious, it cannot impose upon the public the burden of such increased rates as may be required for realizing profits upon such excessive valuation or fictitious capitalization. In his recent discussion of the question in the Senate of the United States, Senator La Follette said: "The public contends that the capitalization is grossly in excess of the fair value, and not a lawful basis for taxing transportation. . . . This session of Congress will be but the preliminary skirmish of the great contest to follow." When we consider the number of innocent, and often helpless, holders of railroad securities, the need is certainly manifest for the arbitrating power of a just and conservative public opinion.

As stated already, the Chancellor of the English Exchequer has very recently said to the House of Commons that "the time has arrived for an inquiry into the practicability of a graduated tax upon incomes." Certainly, such a proposal should not startle a country in which the graduated taxation of inheritances, during the last twelve years, has become fixed as a matter of permanent financial policy. While Adam Smith said long ago that "the subjects of every state ought to contribute towards the support of its government as nearly as possible in proportion to their respective abilities," the Supreme Court, in the case of Thomas *vs.* Gay (169 U. S., 283), held that the law-making power is to determine all questions of discretion or policy in ordering or apportioning taxes, and all necessary rules and regulations for their collection; such questions are not for the courts, unless the legislature transcends its functions. And the same court, when it was called upon to determine the constitutionality of that part of the War Revenue Act of 1898 which imposed taxes on inherit-

ances by steadily increasing the rate to be levied as the amount of the inheritance increased, said that:

"Taxes imposed with reference to the ability of the person on whom the burden is placed to bear the same have been levied since the foundation of the Government. So, also, some authoritative thinkers and a number of economic writers contend that a progressive tax is more just and equal than a proportional one. In the absence of constitutional limitation, the question whether it is or not is legislative, not judicial. *The grave consequences which, it is asserted, must arise in the future, if the right to lay a progressive tax be recognized, involves in its ultimate aspect the mere assertion that free and representative government is a failure.*"

Because, by a single vote, the Supreme Court decided some time ago against the validity of a proportional income tax levied in a certain form, there is no reason to believe, in the light of the foregoing declaration, that the Court, as it is now, or as it will be constituted in the near future, will attempt to annul acts, drafted in the proper form, imposing graduated taxes upon both incomes and inheritances. When public opinion becomes so emphatic upon this all-important measure as to drive both political parties to unite in its support, as in the case of the rate bill, the outcome will be, no doubt, an act upon which the Supreme Court will put the stamp of its approval. When a calm survey is thus made of all the pending problems involved in the gradual redistribution of the abnormal masses of surplus wealth accumulated in the hands of a few individuals, mainly through the appropriation of state powers which are common property of all, it is probable that all necessary reforms can be worked out through the agencies which our complicated constitutional machinery provides. The driving power must be an aggressive public opinion, which will treat with equal severity the bloated monopolist, who is striving to retain more than his share, and the lazy Socialist, who is striving to appropriate a share produced by the sweat of some other man's brow. The individual freeman seeking an honest return for honest labor must be carefully protected against both, while the imported anarchist, who looks on with a scowl, must be given to understand that, if he lives here, he must live according to law, and that, if he attempts to assail that law with the bomb and the torch, he must die according to law.

If this republic is to stand forth distinctively for anything, it

should be for the principle of Individualism, as opposed to Socialism and Anarchy on the one hand, and to the tyranny of consolidated corporate wealth on the other. It should be the great missionary field in which the apostles of Individualism should preach its gospel to the rest of the world, less by precept than example. Those of its founders who fled from the intolerable restrictions of a political and ecclesiastical system dominated by the Star Chamber and High Commissions, attempted to establish here a new state system, in which the individual Christian man, guided by his own conscience and responsible spiritually only to his private judgment, could be restricted as little as possible by the intrusion of state power into the domain of individual activity. With that end in view, the state powers, local and national, were incased in a system of constitutional limitations, without a precedent in the world's history. An entirely unforeseen outcome of that system of restrictions has been an immunity from state control in favor of private corporations never guaranteed to them by English law, or by Roman law as administered in the Continental nations. Thus a vitalized monster like unto Frankenstein's has developed within the palisades, which, through immunity from state control, has drawn into its hands an almost inconceivable aggregate corporate wealth, estimated at many billions of dollars. The dominating impulse of those who direct this mighty force is so to organize and consolidate it that the will and identity of the individual toiler, in every department of life, shall be obliterated and lost in aggregations which swallow up all minor competitors. Thus the inevitable mission of the monster born of corporate exemption from state control is to cut the tap-root of the national life, by eliminating Individualism as its foundation. Who can doubt that that consummation is inevitable, unless there still remains in the American people, manacled as they are by fetters of their own forging, enough unrestrained legislative power in the State and Federal Legislatures to remove the menace to Individualism which is more uncompromising and deadly in its tendency even than that embodied in the state system of the Mother Land at the time of the migration.

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